Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding RE/MAX REALTY SOLUTIONS, AGENT FOR THE OWNERS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, RP, LRE, OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

At the outset of the hearing, the landlord requested the style of cause be amended to reflect that the name of the agency representing the landlord for this tenancy. The landlord noted that the tenants had used their personal business name, and not the proper legal name as noted on the written tenancy agreement. In review of the documents before me, I am satisfied that the tenants' application should reflect the

proper name of the landlord's agent. Accordingly, the style of cause was amended to reflect the name of the agency that represents the landlord.

Both parties confirmed that this tenancy was ending on April 30, 2023. Accordingly, the tenants' application for the landlord to perform repairs, to suspend or set conditions on the landlord's right to enter the rental unit, and for the landlord to comply with the tenancy agreement were cancelled.

As both parties were in attendance, I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application'). In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Preliminary Issue: Landlord's Request for an Adjournment of Hearing

This hearing, which was originally set for one hour, commenced at 11:00am, and finished at 12:18 p.m. At approximately 12:07 p.m., the landlord's agent, KC, requested an adjournment in order to call witnesses. KC argued that they were not informed at the beginning of the hearing, nor asked, about their right to call witnesses, and that they did not have the opportunity to do so. The landlord named several witnesses that they wanted to call. The landlord also expressed concern that due to the 30 minutes spent discussing preliminary issues at the beginning of the hearing, the landlord did not have sufficient time to respond to the tenants' application. The landlord argued that due the significant amount of compensation requested by the tenants, the landlord must be provided with a fair opportunity to respond.

The tenants were opposed to the landlord's adjournment application. The tenants argued that the landlord had ample time to prepare for this hearing, and respond to this application. The tenants also argued that the landlord did not establish why these witnesses were required, and how an adjournment was necessary. The tenants expressed concern that this matter has been outstanding for some time, and that they wanted a resolution.

In deciding whether the landlord's adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

RTB Rule of Procedure 7.19 states the following about a witness' attendance at the dispute resolution hearing

"Parties are responsible for having their witnesses available for the dispute resolution hearing.

A witness must be available until they are excused by the arbitrator or until the dispute resolution hearing ends."

In this case, the landlord did not indicate that they wanted to call witnesses until 12:07 p.m., well after both parties had finished their submissions, and 7 minutes after the usual allotted time for a hearing. I had extended the hearing to allow both parties ample time to make their submissions and cross examine the other party if they wished to do so. I note that the no witnesses had called into the teleconference hearing to confirm that they were prepared to provide testimony, nor did the landlord indicate at any point until 12:07 p.m. that they wanted to call witnesses.

As noted in RTB Rule of Procedure 7.19, the parties are responsible for having their witnesses available for the dispute resolution hearing. In this case, although I did not canvass with the landlord during the hearing whether they planned on calling any witnesses, the landlord did not make this request until the end of the hearing, and after both parties were provided time to make their submissions. As noted above, none of the witnesses were in attendance, and the landlord made this adjournment request at the end of the hearing, after they had already made their submissions. The landlord did not provide an explanation for why these witnesses did not make themselves available during the scheduled hearing time.

The onus is on both parties to be prepared for the hearing, including making sure that their witnesses were available to attend at the scheduled hearing time. I am not satisfied that the landlord had made the proper arrangements to have their witnesses attend. Furthermore, the landlord did not mention that they wanted to call any witnesses until both parties had already made their submissions. I find that both parties had a fair opportunity to be heard, and call any witnesses in accordance with Rule 7.19. I find that

this adjournment request was due to landlord's failure to properly prepare for the hearing despite having ample time to do so.

The request for an adjournment was not granted. The hearing ended at 12:18 p.m.

Preliminary Issue: Landlord's Concerns about Lack of Monetary Order Worksheet

The landlord expressed concern in the hearing that the tenants did not submit a monetary order worksheet for their claims.

I note that RTB Rule 3.7 states the following about claims and evidence:

2.2 Identifying issues on the Application for Dispute Resolution
The claim is limited to what is stated in the application.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient, and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

There is no requirement that an applicant submit a monetary order worksheet. In this case, I find that the tenants had clearly stated their claims, which were understood by both parties. I find that the evidence presented was organized, clear, and legible. Accordingly, the tenants' entire claim was considered.

Issues(s) to be Decided
Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to the rent reductions requested?

Are the tenants entitled to recover the fling fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on May 1, 2022, with monthly rent set at $3,250.00, payable on the first of the month. The landlord collected a security deposit in the amount of $1,625.00.

The tenants filed this application requesting reimbursement of lightbulbs, light fixtures, and grass seed that had to purchase in the total amount of $308.37. The tenants submitted receipts for these items. The tenants testified that they discovered upon move-in that many light bulbs were burnt out, and that they tried to mitigate the cost of replacing them by purchasing multi-packs, and only for the bulbs that they needed. The tenants testified that they bought the light fixtures from a re-store, and installed the fixtures themselves to mitigate costs. The tenants also noted that the lawn required significant re-seeding, and the landlord had verbally agreed that the tenants could fix the lawn.

In addition to reimbursement of the purchased items, the tenants also requested a rent reduction equivalent to three month's rent as they felt the home was not livable. The tenants testified that the extent of the deficiencies was so bad that they could not unpack their boxes due to the amount of dust from the repairs. The tenants testified that their children could not move in until mid to late July, and one child was never able to move in at all. The tenants considered the home unliveable as they had to wait six weeks for a plumber to attend and unplug the toilets and shower. The tenants testified that they were down to one useable bathroom. The tenants testified that they had wanted to move out earlier, but had to attend to their business.

The tenants testified that it took approximately 2.5 months before they could settle in, and there were still many deficiencies. The tenants testified that they tried their best to accommodate tradespeople, and that it took weeks to get things done. The tenants noted KC's request for the tenants to clean the P traps and change the batteries for the non-existent smoke detectors. The tenants felt that the deficiencies were not considered high priority by the landlord.

The tenants submitted a copy of the email the tenants sent on May 1, 2022 to the landlord outlining the deficiencies that they noticed upon moving in. The email included

a notation about how “there are multiple light bulbs missing”, and how “the light fixture in the kitchen has lights hanging down”. The tenants also noted that the home smelled like marijuana and cigarette smoke, that the home was not clean, and numerous repairs that needed to be done. The tenants sent another email on May 9, 2022 noting further deficiencies such as issues with the freezer, a burner on the stove not working, a non functioning chandelier, inability to control the heat or air conditioning, and the poor air quality in the home. The tenants also submitted photos of the home they took when they first moved in.

The tenants testified that the landlord’s agents responded that they would provide the tenants with some compensation in the form of a rent reduction for the deficiencies noted by the tenants upon move-in. The tenants submitted a text message from KC on May 9, 2022 which stated that they had discussed “getting some rent back for this month with our clients”, as well as an email dated May 9, 2022 from KC stating “I am sorry for the condition of the property upon move-in…” and that KC had communicated with the tenant LC that they were going to “try and get you ½ a month’s rent back due to the home not being ready, and take that from the tenant’s deposit”.

The landlord noted that the move-in inspection report only notes one burnt out bulb in the bathroom, and questioned why the tenants should be reimbursed for the multi-packs. The landlord noted that reimbursement for one pack was reasonable, but not compensating the tenants for future replacement bulbs in the home. The landlord noted that the move-in inspection report was completed thoroughly, and reflected the condition of the home. The landlord responded that the owners had spent $17,000.00 to repair the home, and supported by the receipts submitted in evidence. The landlord responded that the tenants had unrealistic expectations, and expected that work be done “at the snap of a finger”.

The landlord argued that their clients had the right to perform repairs within a reasonable amount of time, which the landlord felt that they did. The landlord also disputes that the tenants had permission to be reimbursed for re-seeding the lawn. The landlord noted that the inspection report contradicts the tenants’ testimony, and noted that the lawn needed a mow, not re-seeding.

The landlord testified that the previous tenants were four college kids, and the landlord had informed the tenants that they preferred to start the tenancy in mid-May to allow the landlord time to perform repairs and ensure that the home was ready for occupation. The landlord testified that the tenants had sent a text message on April 4, 2022 requesting early possession, but informed the tenants that the “guys will be on the

house until the last day of the month", and "I won't know how it looks until Saturday when we do their move-out".

The landlord testified that they attempted to work with the tenants to provide compensation, and that their clients did everything they could to perform the repairs and address the deficiencies. The landlord noted that they did file an application for compensation against the previous tenants in another hearing, which was dismissed by the Arbitrator with leave to reapply.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the Act, which states:

Liability for not complying with this Act or a tenancy agreement

> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide

evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In this case the tenants requested a monetary order equivalent to the full monthly rent for a period of three months. As noted above, in assessing their claim, the party applying for dispute resolution bears the responsibility of demonstrating entitlement to that monetary award. In the case of a Frustrated Tenancy, a tenant would normally be entitled to the return of the rent from the point where it is determined the contract was frustrated. Although the tenants did not reference the term "frustrated", the tenants did describe the home as "unliveable".

Residential Tenancy Policy Guideline 34 states the following about a Frustrated Tenancy:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the Frustrated

Contracts Act, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.

In consideration of the evidence and testimony before me, I am not satisfied that this tenancy meets the definition of a Frustrated Tenancy as contemplated by RTB Policy Guideline 34. Despite the fact that the tenants described the home as unliveable, and although I acknowledged that the home contained deficiencies, the tenants still resided in the home for some period of time. I find that the tenants were still able to occupy the home to some extent. Although the tenants' children never moved in, I am not satisfied that the tenants had provide sufficient evidence to support that this was because the home was truly uninhabitable. I find that the rental unit was still inhabitable, and the tenancy does not qualify as a Frustrated Tenancy.

Although this tenancy may not be considered a Frustrated Tenancy, the tenants still have the right to apply for a reduction in rent as noted in section 65 of the *Act* to reflect the reduction in value experienced by the tenants. Although the tenants requested a monetary order equivalent to one hundred percent of the rent for three months, I find that the tenants did not provide sufficient evidence to support that they suffered a loss equivalent to that amount.

In consideration of the tenants' claim, I do find that the tenants did suffer a significant reduction in the value of the tenancy agreement. I find that the evidence clearly shows that the home was not left by the previous tenants in previously clean and undamaged condition, as shown in the photos and noted on the condition inspection report. I find that this was acknowledged by the landlord as they had responded that they would speak to the owners about negotiating some compensation to reflect this. Although the landlord argued that the tenants requested the early move in date, and should have adjusted their expectations, I note that the landlord did agree to start the tenancy on May 1, 2022. Although it may not have been the landlord's intention to rent out the home in the condition reflected in the evidence, I note that the tenants are still entitled to a reduction in rent equivalent to a reduction in the value of the tenancy.

As noted above, the applicant bears the burden of supporting the losses claimed. In this case, the tenants simply requested a one hundred percent reduction in rent for three months, which I do not find justified, nor supported by any witness testimony, actual receipts or invoices, or similar claims of this nature. I accept the evidence provided by the landlord proves that the landlords did send tradespeople to undertake repairs in response to the tenants' concerns. I accept the testimony of the landlord that they attempted to undertake these repairs as soon a possible, provided the circumstances. I

find that the landlord fulfilled their obligations under section 32 of the *Act* to perform repairs as required.

I find that the tenants are entitled to some compensation for the reduction in the value of the tenancy agreement due to the condition of the home upon move-in. I find that a 50% rent reduction for the first two months to be fair. Accordingly, the tenants are granted a monetary order in the amount of $3,250.00, which reflects the reduction in the value of the tenancy agreement suffered by the tenants.

The tenants also requested reimbursement for some purchases they made. I note that Residential Tenancy Policy Guideline #1 does state:

The landlord is responsible for:

1. making sure all light bulbs and fuses are working when the tenant moves in.
2. replacing light bulbs in hallways and other common areas like laundry and recreational rooms.

I accept the landlord's testimony that the move-in inspection report only notes "burnt out" under light fixtures in the bathroom, I find that it would not be reasonable or cost effective to purchase only one light bulb. I find that the receipt reflects the purchase of three packs: a 3 pack, a 12 pack, and a 24 pack. As I am not satisfied that the evidence shows specifically how many light bulbs were burnt out upon move in, I do not find that the landlord should be responsible for replacing 39 lightbulbs in the home. As I am satisfied that some bulbs were indeed not working, I allow the tenants reimbursement of half their claim for the lightbulbs.

In light of the remaining claims, I do not find that the landlord had consented to reimburse the tenants for re-seeding the lawn, or replacing the light fixtures. I find that these items do not qualify as emergency repairs pursuant to section 33 of the Act, and the landlord has the right to perform repairs within a reasonable amount of time after being requested to do so. I find that these purchases were not justified, nor consented to by the landlord, and therefore I dismiss the remaining claims without leave to reapply.

I note that the tenants' application references the misconduct of the landlord. I note that the Compliance and Enforcement Unit (CEU) ensures compliance the residential tenancy laws of BC. When a landlord or tenant has seriously and deliberately not followed BC tenancy laws, the CEU may investigate and issue administrative monetary penalties. Under section 87.3 of the *Act,* "Subject to the regulations, the director may

order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

> (a)contravened a provision of this Act or the regulations,
> (b)failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or
> (c)given false or misleading information in a dispute resolution proceeding or an investigation.

I note that the Director has not delegated to me the authority to impose administrative penalties under section 87.3 of the *Act*. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative penalty process is separate from the dispute resolution process. The Compliance and Enforcement Unit (CEU) is a team within the Residential Tenancy Branch, and the tenant may pursue the appropriate remedied through this process if they wish. As I do not have the delegated authority to administer any penalties under section 87.3 of the *Act,* I decline to make any orders under this section.

As this application has some merit, I allow the tenants to recover the $100.00 filing fee for this application.

Conclusion

I issue the tenants a monetary order in the amount of $3,454.08, as set out in the table below.

Item	**Amount**
Rent Reduction	$3,250.00
Reimbursement for light bulbs	104.08
Reimbursement of Filing Fee	100.00
Total Monetary Order to Tenants	**$3,454.08**

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenants' application is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 03, 2023